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IN THE

Supreme Court of the United States

October Term, 1955

No. 256

LAWRENCE CALLANAN, CARL BIANCHI, L. A. THOMPSON, WILLIAM POSTER AND R. M. SECOR, *Petitioners,*

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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OPINION BELOW

The opinion of the Court of Appeals is set forth in the Appendix, *infra,* pp. 1a-17a, but is not yet officially reported.

JURISDICTION

The judgments of the Court of Appeals were entered on June 3, 1955. A timely petition for rehearing was filed, and this petition was overruled on July 5, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. In this case an employer, about to perform a construction contract, told a labor representative that he was fearful of loss because the unions involved had performed inefficient work on a previous contract and he was afraid the same inefficiency might be repeated. The evidence showed no illegal or unfair labor practices in the work on the previous contract. The labor representative was not responsible for the inefficiency complained of. He made no threats. He merely promised to see other union representatives and to speed up the work for a cash payment.

The question presented is whether, under these circumstances, the payment by the employer is one made under compulsion and constitutes extortion under the Hobbs Act, 18 U.S.C. § 1951.

2. At the trial the greater part of the evidence was offered in an attempt to show that defendants were responsible for past illegal activity in connection with the previous contract. The court below found that no evidence of illegal or unfair practices was shown.

The question presented is whether, having admitted this evidence, failure to give the instruction required by § 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106, that clear proof of responsibility must be shown is error.

3. The court below construed the definition of extortion under the Hobbs Act in such a way as to make the offense substantially the same as the offense of breach of trust under § 302 of the Taft-Hartley Act, 29 U.S.C. § 186.

The question presented is whether, if such a construction of the Hobbs Act is sustained, the refusal of

the Court to instruct the jury on the difference between the lesser offense under the Taft-Hartley Act and the greater offense of extortion under the Hobbs Act is erroneous.

4. Whether the language of the Hobbs Act, 18 U.S.C. § 1951, making unlawful "the obtaining of property induced by wrongful use of actual or threatened force, violence or fear" includes fear of loss of expected profits not caused by force or violence?

STATUTES INVOLVED

Hobbs Act, 18 U.S.C. § 1951, 62 Stat. 793:

> "(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> "(b) As used in this section—
>
> * * *
>
> "(2) The term 'extortion' means the obtaining of property from another, which his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right."

Taft-Hartley Act, 29 U.S.C. § 186, 61 Stat. 157:

> "(a) It shall be unlawful for any employer to pay or deliver, or agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce."

Norris-LaGuardia Act, 29 U.S.C. § 106, 47 Stat. 71:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

STATEMENT

This case involves important and far-reaching issues which concern the proper interpretation and application of the Hobbs Act. We believe that these issues can be presented more briefly if we discuss the opinion and the facts together, since they are inextricably intertwined.

The essential facts from which this prosecution arose are quite simple. In 1951 the O. R. Burden Construction Company, the victim of the alleged extortion in this case, built an interstate pipeline for the Platte Pipeline Company. In May of the next year the Burden Company contracted to construct another pipeline for the Sinclair Pipeline Company.

On May 16, 1952, before work began on the Sinclair contract, O. R. Burden, president of the company, and his vice-president, one Thibodaux, met with representatives of the various unions involved, including petitioner Callanan as agent for the pipefitters, to discuss working conditions, hours and wages. (R. 269) When the meeting adjourned for lunch Callanan invited Burden to eat with him. The Government's case rests entirely on Burden's testimony as to what occurred at this luncheon meeting. (R. 269-270) Burden initiated the

conversation by complaining to Callanan that "we had suffered terrific losses on the Platte line" and that as to the new Sinclair contract he was afraid of "First, loss financially; second, was danger to our men; third, danger to our property. I told Callanan that this all would have to be changed." (R. 270).

There was no evidence that defendants had been responsible for any act which would create fear of any kind on the part of Burden. Indeed, there was no evidence that any previous labor activity had been unlawful or unfair. The court below said in this connection:

> "We do not believe that any of this evidence goes to the extent of establishing that any illegal or unfair labor practices existed prior to the alleged extortion demands." (Appendix, *infra,* p. 11a)

Burden explained at the trial that the important things he had in mind were (R. 270):

> "We wanted the stewards to work; we wanted a better brand of welding; we wanted more work per day per man. Those were the three most important points."

In response to this complaint by Burden, Callanan agreed that for a payment of $28,000 to be shared between himself and the other labor representatives (R. 271):

> *"he would personally see and talk to the other crafts ... and see that the job was speeded up."*

This is the entire case of extortion under the Hobbs Act. There was no "actual or threatened use of *force* [or] *violence* . . ." The court below held that a violation had been shown through "actual or threatened

use of *fear*". Callanan did not threaten to cause unfair labor stoppages or labor difficulties on the new contract, and no such illegal acts had been shown in the past, as the court below stated.

Callanan promised to use his influence to speed up the work. Burden gave, and Callanan received, a payment for a breach of trust. On the basis of this evidence, and this evidence alone, the court below sustained conviction of all the defendants on the serious felony of extortion and conspiracy to extort under the Hobbs Act. All the defendants except one were sentenced to twelve years on each count, the second sentence being suspended.

The case as ultimately affirmed in the Court of Appeals was not the case charged in the indictment. This had consisted of two counts. The first count was for conspiracy to extort and, in support of this, the indictment charge defendants with: (1) demanding money *for their personal benefit;* (2) calling strikes causing work disputes, work stoppages and difficulties * * * not for the purpose of obtaining labor objectives; (3) demanding that unnecessary workmen be hired "who would not have been hired but for defendants' use of force, violence and fear"; (4) waiving such demands in consideration of money; (5) demanding the use of wasteful methods and labor practices; (6) waiving such demands in consideration of money; (7) threatening to prevent the construction company from utilizing labor in the customary manner unless money was paid; (8) *assuring that the performance of Burden's contract would proceed in a workmanlike and efficient manner;* (9) threatening to exercise their authority as labor representatives to cause strikes and work stoppages; and (10) making demands and threats to instill fear in the mind of O. R. Burden. (R. 1-6).

Neither was the charge presented by the second count of the indictment anything like the offense the Court of Appeals found when it sustained the conviction. That count charged that the defendants (1) threatened and committed acts of violence to persons and property; (2) caused Burden to fear that he would suffer a financial loss and injury to his employees and to his property; (3) threatened to call and conjure up strikes, etc.; (4) threatened to make arbitrary and excessive demands for unnecessary workmen; (5) threatened to use their offices as labor representatives to enforce wasteful methods. (R. 6-9).

The Court of Appeals considered the case, however, as though the entire second count, and all but charges (1) and (8) of the first count were immaterial and surplusage,—as indeed they were if the court's theory is correct. The prosecution was unable to show at the trial that there were any strikes called, any demands by Callanan or any other defendant that Burden hire unnecessary men, any use of violence as part of the conspiracy, or any threats on the part of Callanan or others to enforce demands for payment by using or threatening violence or unfair labor practices. The sole offense found by the Court of Appeals consisted of the receipt of money for the personal benefit of the defendants.

Nonetheless, the jury was permitted to hear evidence on the issues which the Court of Appeals now holds are immaterial. The great bulk of the evidence at the trial dealt with alleged unfair labor practices on the previous Platte contract. The Government built its case on the theory that the unions on the previous contract had insisted on unnecessary labor and that the workmen had engaged in a voluntary, unfair and costly

slowdown. The defense introduced voluminous testimony to show that this was not true and it is apparent from this record that such extraneous factors as weather had a great deal to do with the high cost of the work on that contract. When the petitioner attempted to prove that the reason for the loss on that contract was a ruinously low bid made by the Burden Company the evidence was excluded. The court instructed the jury that it was immaterial whether or not Burden lost money on the Platte contract and based its charge, not on the Court of Appeals' theory that previous unfair labor practices need not be shown, but rather on the assumption that the defendants were responsible for unfair labor practices on the Platte contract. On this issue the court charged:

> "Now, the question is, first, before the conversation alleged as of the 16th of May, 1952 and thereafter, what, if any, delays were caused on the pipe lines by labor troubles which were directly or indirectly affecting the progress of the lines that was attributable to either of these defendants and the defendants as a whole.
>
> "Was there labor strife?
>
> "Were there labor troubles?
>
> "That is a matter for you to decide.
>
> "The testimony regarding the delays on account of lack of pipe, lack of a ditch, that does not bear very strongly on the issues, except it may show that there were no delays due to labor troubles, or that the delays were not due to any activities of these defendants through their respective unions". (R. 673)
>
> "If you find that the defendants did enter into a conspiracy as charged, then proceed to determine if any one or more of the parties to the parties to

the conspiracy, so found, committed any one or more of the overt acts charged in the indictment, to effect the objects of the conspiracy, and whether or not the conspiracy affected interstate commerce." (R. 688)

"Before you can convict the defendants, or either of them, on count two of the indictment, there must be a like finding as to intent of the defendants as to the acts charged to have been committed by the defendants, and as charged in count two of the indictment, that they, the defendants, thereby intended to and did interfere with interstate commerce". (R. 690)

We think it is fair to say that the entire case against the defendants as presented at the trial was based on their alleged responsibility for the labor activities on the Platte contract and on the implicit assumption that these were unfair labor practices which had diminished Burden's profits. In spite of this the trial court categorically refused to give the instruction required by Section 6 of the Norris-LaGuardia Act informing the jury that there must be clear proof of defendants' responsibility for the previous acts of their unions.

The Court of Appeals recognizing the necessity of the Norris-LaGuardia Act instruction if the case were based on the labor difficulties on the Platte contract escaped the dilemma by holding that there had been no previous unfair labor practices and that all this voluminous evidence became surplusage.

The sole incident of violence was an assault on Leon Blackwell, a teamster labor steward, by a workman seeking employment on the Platte contract in October 1951. There was no foundation for this testimony, no

evidence that defendant Callanan ever knew about the assault since the parties did not belong to his union. No relationship was shown between this incident and the payment of money. Yet the trial court singled it out for special emphasis as follows:

> "The Platte project was the first one. Work started on it some time in May of 1951. In connection with this line, there was testimony by the witness Blackwell of an assault made on him on October 16, 1951. As I recall his testimony, it was that he was a steward on the job representing the union of which the defendant Thompson was the agent. If that assault took place as it was testified to by the witness Blackwell—and I don't recall any contrary testimony as to how the assault was perpetrated—it was a reprehensible act and it cannot be condoned or mitigated by any intelligent, civilized person. He testified that about the 13th of October two men came on the job with a letter from the defendant Thompson, telling him to give the men who had the letter the best jobs that he had. According to Blackwell's testimony, no jobs were open; and a day or two later, after he had informed these two men of that, when he had refused to give them work, he saw their car in a ditch apparently stalled and he got out to help them, and on this occasion he testified that he was knocked down by one of the men, who had a chain in his hand, and while he was on the ground one of the men kicked him in the mouth and knocked out several of his teeth." (R. 674-675)

The Court of Appeals excused the admission of this testimony on the theory that it (Appendix, *infra*, p. 10a):

> "was admissible as bearing on the reasonableness of Burden's fears."

We assert that a fair reading ot the court's entire instructions does not permit the conclusion that the Blackwell incident was limited to Burden's state of mind. It was the only act of violence in the entire record and the court in its instructions specifically told the jury that on the evidence they could find that the defendants were responsibile for violence. And in addition to allowing the jury to find responsibility for violence the court played up this single incident in the most inflammatory and prejudicial manner.

REASONS FOR GRANTING THE WRIT

I

The court below, in sustaining this conviction, has created a precedent which will seriously affect the administration of criminal justice in labor management relations. It has held that extortion may be found in the absence of any previous unfair labor practices or any threats of future unfair practices from the mere payment of money to a labor representative in the hope of better labor relations.

The most recent case involving the construction of the Hobbs Act which has been before this Court is *Bianchi* v. *United States,* No. 646, Oct. Term, 1954, where certiorari was denied. There the defendants contended that fear of economic loss was not a sufficient basis for extortion. The *Bianchi* case stands for the principle that a threat to call a strike and thus cause economic loss is sufficient to sustain a conviction under the Hobbs Act.

The decision of the court below in this case goes far beyond the *Bianchi* case. It adopts such a broad construction of extortion as to take away all previously

adjudicated requirements for conviction under the Hobbs Act and its predecessor.

Indeed, the opinion of the court below is contrary to the construction of the Act by the trial judge in this case. It is contrary to the theory that the Government adopted in presenting the evidence below. Finally, it is contrary to the construction of the Hobbs Act urged on this Court by the Government in its opposition to the petition for certiorari in the *Bianchi* case.

The Government's conception of the elements of the offense of extortion which it presented to this Court in opposing certiorari in the *Bianchi* case was as follows:

> "In describing the elements of the offense charged in the indictment, the judge told the jury that they must find, *inter alia*, that petitioners 'made express or implied threats * * * that industrial strife would ensue' unless their demands for money were complied with, and that they 'made such demands for money for their own personal profit and not in the interests of the members of their respective unions'. He further charged:
>
> > The mere receipt of money or anything of value by a labor representative of employees from the employer of such employees is not of itself sufficient to constitute an offense under the indictment; but before you can convict any defendant under this indictment it is incumbent upon the Government not only to prove beyond a reasonable doubt that each defendant received or agreed to receive from Felix Johnson money or other things of value, but they must go further and prove beyond a reasonable doubt that the defendants committed some acts, the likely effect of which would be to induce fear in Felix Johnson, and if the Government

fails to prove fear, the defendants should be acquitted.

In the light of this charge, and the evidence in this case, there is no substance in petitioner's contention (Pet. 29-34) that it was error for the judge to fail to charge on the elements of the Taft-Hartley Act and to permit conviction thereon as a lesser included offense. As petitioners themselves state, the Taft-Hartley offense relates essentially to bribery, and bribery and extortion are mutually exclusive. *If the employer paid the money as a bribe, petitioners could not have extorted it through fear. People* v. *Feld,* 262 App. Div. (N.Y.) 909 (1941); cf. *Hornstein* v. *Paramount Pictures, Inc.,* 292 N.Y. 468 (1944). Petitioners did not, as did the defendant in the *Feld* case (*supra*), offer evidence to the effect that they had taken money as a bribe. There was thus no reason for the judge to charge on a defense not made. The judge did charge in the portion quoted above that the mere receipt of money by a labor leader did not constitute the offense charged in the indictment. He also charged that, before petitioners could be found guilty, the jury had to find that they made threats for the purpose of extorting money for themselves. This charge related to the acts of the petitioners, not the state of mind of the employers, so that petitioners are in error in saying (Pet. 33) that the difference in the offenses can turn on the timidity of the victims. As the judge correctly charged, petitioners were guilty under the Hobbs Act only if they themselves used fear to extort. Since the *judge correctly charged on all the elements* necessary to convict, he was not required to charge on the elements of some other offense not charged and therefore not before the jury for consideration." (Brief for United States, pp. 16-18, *Bianchi* v. *U. S.*, No. 646, Oct. Term 1954). (Emphasis supplied).

We call particular attention to the Solicitor General's admission that the trial court in the *Bianchi* case correctly stated the elements necessary for a conviction under the Hobbs Act. The opinion of the court below contradicts the analysis of the elements of the offense made by the court in the *Bianchi* case and approved by the Solicitor General. The extent to which the opinion below departs from the *Bianchi* case is shown by the following analysis:

(1) In *Bianchi* the court instructed that the jury must find that defendants made express or implied threats that industrial strife would ensue unless money was paid. The trial court similarly charged here. The decision below dispenses with the requirement of any sort of threat in the following language:[1]

> "If fear was created in the victim's mind, if such fear was a reasonable one, and if the defendants by making use of that fear extorted money or property, the foundation for guilt is established.

---

[1] The Government in its *Bianchi* brief stated the Hobbs Act was designed to conform to the definitions of the New York Penal Code (Brief for the United States, pp. 13-14). Section 851 of the New York Penal Code requires that extortion by fear be induced by threats and provides:

> "What threats may constitute extortion. Fear, such as will constitute extortion, may be induced by an oral or written threat (1) to do an unlawful injury to the individual threatened, or to any relative of his or to any member of his family or to a corporation of which he shall be an officer, stockholder, employee or agent; or (2) to accuse him, or any relative of his or any member of his family, of any crime; or (3) to expose, or impute to him, or any of them, any deformity or disgrace; or (4) to expose any secret affecting him or any of them; or (5) to kidnap him or any relative of his or member of his family; or (6) to injure his person or property or that of any relative of his or member of his family by the use of weapons or explosives."

> In the *Bianchi* and *Hulahan* cases there were express threats that if the money was not paid labor difficulties would follow. In this case we find no evidence of a direct threat." (Appendix, *infra*, p. 5a)

As for implied threats, the logic of the opinion shows that none are necessary to sustain a conviction. Playing on the hopes of the victim, offering him a service which will increase his gain is held to be sufficient.

(2) The court in *Bianchi* instructed the jury that it was incumbent on the Government to prove not only the receipt of money but also that defendants had committed acts the likely effect of which would be to induce fear in their victim,—the same instruction that the trial judge gave here. The decision of the court below abolishes the requirement that the fear of the victim be a consequence of the defendants' act.

(3) In the *Bianchi* case the alleged victim was afraid that he would be subjected to illegitimate and unlawful labor restraints if the money was not paid. Here, as the court below found, there was no such fear and no unlawful or unfair labor practices existed. Money was paid for a promise to speed up the work and to relieve Burden from the consequences of lawful activities on the part of the union. A desire to increase his profits by getting more work out of the men is considered by the court below to be the kind of "fear" on which extortion may be based.

(4) And finally the opinion below contradicts the assertion of the Solicitor General in the *Bianchi* case that bribery and extortion are mutually exclusive.

In effect, the decision of the court below is that where an employer pays a labor representative in the

hope of gaining better labor relations, he is the victim of extortion because of his "fear" that he will not get better labor relations without such payment.

This is in conflict with the views expressed both by the majority and the dissent in *United States* v. *Ryan*, 2 Cir., Docket No. 23546, July 1, 1955. There Ryan, a labor official, received a series of payments from employers. The purpose of the payments was obviously the same as it was in this case, to assure friendly labor relations and to avoid difficulties with the union. There was no express promise shown but neither is there any definite promise in this case. All Callanan promised to do was to see the other representatives and vaguely to speed up the work. This was a perfectly lawful thing for him to undertake. The only illegality lay in receiving the money. Hence we consider that the factual situation in this case and the *Ryan* case are for all legal purposes the same. Under these similar facts, the majority in the *Ryan* case held unequivocally that "there was no evidence of extortion (or the like)." (Appendix, *infra*, p. 23a)

In his dissenting opinion, Judge Hand said:

> "... the employer did not bribe the accused; it did what has been done, time out of mind, when one person, knowing that he is likely to have continuous dealing with another, in which the second person will be acting as a fiduciary, wishes to insure a friendly approach to the fiduciary; and makes him presents or does him favors, or in other and less palpable forms tries to turn the edge of his allegiance. Although § 186 deals only with the grosser forms of this evil, it presupposes a more than ordinary fiduciary defection. A union official has a double loyalty: first, he owes it to the members of his union, who have chosen him to repre-

> sent them; next, he owes it to those employees, who are not members, but in favor of whom the law has nevertheless imposed on him an equal duty. Surely, it was altogether likely that Congree should wish to put an end to such abuses by both parties—the unions and the employers." (Appendix, *infra,* pp. 34a-35a)

These observations exactly fit the present case. Burden paid Callanan to obtain his loyalty and to induce him to breach his fiduciary relationship to his union. Callanan promised to do nothing more than talk and persuade in the vague area of efficiency and the hiring of unnecessary labor. This is not a bribe but a breach of trust. In the absence of the Taft-Hartley Act, it would not have been a crime.

Thus both the majority and the dissent in the *Ryan* case are authority for the proposition that payment of money to divert the loyalty of a labor representative and to cause him to break his trust is neither bribery nor extortion. There is no difference in view between the majority and the dissent in *Ryan* on this issue. Their only difference lies in the definition of a labor representative, a question which is irrelevant here.

We can see no difference between the facts of the two cases. The motivation of the employers in each case is the same. A difference is not created by the fact that the court below labels that motivation "fear of economic loss." In both cases the employer was trying to obtain the same kind of advantage. Both employers were acquainted with the general labor situation and with what a friendly labor representative could do for them.

The fact that Callanan made a promise in vague terms, whereas Ryan accepted the money in silence, is not a real difference. No employer would take the risk of violating the Taft-Hartley Act by paying a labor representative for a breach of trust without expecting to get in return what Callanan promised.

However broadly the term extortion is construed, it necessarily involves some degree of compulsion exercised by the defendant on the victim. No element of compulsion can be found in this case. No threats were made. Burden was not harassed by any act for which the defendants were responsible. There were no illegal or unfair activities on the part of the union. The only inducement Burden had for paying money was the hope of better labor relations and more work. To say that a man who paid money on such an inducement has been the victim of extortion is to broaden the act to cover all cases where a fiduciary accepts money in violation of trust.

The confusion created in the judicial administration of criminal labor laws created by the decision below is intensified if it is read in connection with the decision in the *Ryan* case. Under the majority opinion in the *Ryan* case, neither the employer giving money nor the labor representative receiving it commits an offense under the Taft-Hartley Act, unless the labor representative is the exclusive bargaining agent for the union. But individuals are practically never exclusive bargaining agents. Thus the Taft-Hartley Act is given an application so limited as to be almost nonexistent. Therefore, the employer giving money is practically exempt from prosecution.

The labor representative, on the other hand, who accepts the employer's money though he may be im-

mune under Taft-Hartley, nevertheless may be prosecuted for the more serious felony of extortion according to the decision below. That decision declares as a matter of law that a breach of trust which Congress designated in the Taft-Hartley Act as a misdemeanor makes a labor representative guilty of extortion and subjects him to a 20-year prison sentence.

Thus the combination of these two decisions creates a result which immunizes the employer and vastly increases the penalty for the labor representative for precisely the same breach of trust. The man who pays the money goes free, the man who receives it finds his penalty increased twenty-fold. Such a result is an anomaly which could not have been intended by Congress. We think this Court should dispel this confusion and impairment of rational justice by holding that payments for a mere promise to an employer that a labor representative will act as his intermediary to secure better labor relations by talking to other union officials without any threat and in the absence of any previous unfair labor practices is not and cannot be extortion.

II

The greater part of the evidence offered by the prosecution was pursuant to an attempt to show that the defendants were responsible for oppressive labor practices in work on the previous contract. There was a single act of violence, the Blackwell incident. The court instructed the jury that they must find the defendants were responsible for all of these oppressive labor activities in order to convict. (R. 669-670, 673) At the same time, the trial court refused to give the instruction required by § 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106, to the effect that responsibility of

labor representatives for the actions of their unions must be shown by clear proof. (R. 711-713)[2]

In reviewing the failure to give the Norris-LaGuardia instruction, the Court of Appeals conceded it was a close question. It held, however, that since there were no unlawful activities on the previous contract, the question of the defendants' responsibility became immaterial. With respect to the Blackwell incident, the court below said its only purpose was to show Burden's state of mind and hence the Norris-LaGuardia instruction was not required.

The court below sustained the admission of evidence of previous labor activities on the ground that this was "cumulative evidence" which "even if wrongfully admitted, would not constitute prejudicial error." (Appendix, *infra,* p. 12a) If we assume that the court was right in its construction of extortion, it became all the more necessary to protect the defendants by the Norris-LaGuardia instruction, where evidence of previous labor difficulties was admitted. Under the court's theory, the offense of extortion was proved by the mere acceptance of money. If this be true, the only purpose of evidence of previous labor difficulty would be to present to the jury an aggravated offense. Certainly the prosecution's case would have more jury appeal if the jury blamed the defendants for the past oppressive conduct of their unions. Here the defendants were unquestionably blamed by the jury for the hiring of unnecessary labor, for slow-downs, for inefficiency and for a single act of violence in the absence of any proof whatever that any of them had anything to do with these oppressive practices.

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[2] *United Brotherhood of Carpenters* v. *United States,* 330 U.S. 395; *United States* v. *Kemble,* 198 F. 2d 889, 892 (3 Cir. 1952), cert den. 344 U.S. 893.

The court below in effect had ruled that evidence of past labor practices may be introduced to aggravate the offense and at the same time the defendants may be deprived of protection of the Norris-LaGuardia instruction when the jury assesses the blame for those practices. This is a most dangerous precedent if the court's construction of the Hobbs Act is allowed to stand. It permits defendants to be blamed for the acts of others without the instruction which the Norris-LaGuardia Act requires in such circumstances.

Of course this issue will not be reached unless the Court declines to follow our reasoning on the previous question.

III

We present a third point, which also need not be reached unless our first point is rejected.

Defendants requested the trial judge to explain to the jury the difference between a breach of trust penalized by the Taft-Hartley Act and extortion under the Hobbs Act. We believe it was the defendants' right to have the jury told the difference between a compulsory payment, which is the essence of extortion, and a voluntary payment, which though criminal would not be extortion.

In the *Bianchi* case, such an instruction was requested and refused, and this Court denied certiorari. But in that case the evidence was clear that the payment was not voluntary. The defendants there threatened to stop all work if they did not receive cash. In their opposition to certiorari on that ground, the Solicitor General followed the theory of the construction of the Hobbs Act, which we urge here in our first point. He said,

> "As petitioners themselves state, the Taft-Hartley offense relates essentially to bribery, and bribery and extortion are mutually exclusive. If the employer paid the money as a bribe, petitioners could not have extorted it through fear." (Brief for United States, p. 17, *Bianchi* v. *United States, supra*).

It was this argument by the Government which presumably caused the Court to deny certiorari in *Bianchi*.

As the case is now presented, *if the decision of the court below be approved,* payments made in the hope of obtaining better labor relations without more may constitute extortion. The offense covered by the Taft-Hartley Act thus becomes substantially the same as extortion under the Hobbs Act. The only difference we can imagine is that previous oppressive practices might constitute compulsion, where a less aggravated case might properly be brought under the Taft-Hartley Act.

If this be a proper construction of the Hobbs Act, we assert that the case of *Spies* v. *United States,* 317 U.S. 492, required the court to point out to the jury the difference between a compulsory and a voluntary payment. We believe that the *Spies* decision stands for the principle that, where the same overt act can be used against the defendant in prosecutions under two separate criminal statutes, similar except that each requires a different intent, the court should explain that difference.

IV

Although this Court rejected certiorari in the *Bianchi* case, based on the argument that extortion under the Hobbs Act is restricted to fear of force and violence, we nevertheless wish to urge it again. The Court, of course, need not reach this question unless our argument on our first point is rejected.

We argue here that an offense under the Hobbs Act must involve the wrongful use of actual or threatened force, violence or fear of such force or violence causing injury to persons or property. Fear of loss of profits from extraneous causes is not sufficient.

The Act makes illegal the obtaining of property through the "wrongful use of actual or threatened force, violence or fear ...". In this case, as the court below held, there was no showing that force or violence were employed by the petitioner to induce the payment. Nonetheless, the court held that Burden's testimony demonstrated that he did fear losses on the new contract and that " 'fear' as used in the extortion definition of the Hobbs Act would include fear of economic loss." (Appendix, *infra*, p. 3a)

We submit that the word "fear" as used in the definition must be limited to fear of "force" and "violence" and be qualified by those previous words. "Fear" undefined includes anxiety over any kind of trouble. Properly construed under the rule of *ejusdem generis*, it is an ambiguous word which must be held to be qualified by the previous more specific terms.

The legislative history of the Act makes it clear that this was the intention of Congress. Congress during the debates on the Hobbs Act was careful not to include bribes offered because of fear of economic loss. The bill which went to committee was practically identical with the Anti-Racketeering Act, which the Hobbs Act eventually repealed. The Anti-Racketeering Act outlawed obtaining property by "use or threat to use force, violence or *coercion*" (emphasis added) and, under the precedents at that time, including *Nick* v. *United States*, 122 F. 2d 660 (8th Cir. 1941), and *United States* v. *Compagna*, 146 F. 2d 524 (2d Cir.

1944), would have included economic coercion and fear. Congress, however, as a result of hearings unfortunately not reported, struck the word "coercion".

Furthermore, in explaining the bill on the floor after it was reported Mr. Gwynne made clear the elements which would have to be proved:

> Mr Gwynne: ". . . Here is what a prosecutor would need to allege and to prove to get conviction under this law if this bill becomes law:
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> "First, they would need to prove that the activity complained of in some way affected interstate commerce; second, they would have to prove that there was an actual, not a theoretical, taking of personal property; third, *they would have to prove that the taking was by violence, by personal violence, or by actual threats of personal violence,* and the, fourth, they would have to prove that the acts done—they might be violent, they might take something, but the Government would have to prove in addition that the acts did not come within the exceptions set out in Title III" (91 Cong. Rec. 11903). (Emphasis supplied).

The entire emphasis of the debates indicates that Congress was directing the Hobbs Act to the use of labor force or violence, and that fear of economic losses not caused by threats of such violence was excluded:

> Representative Hobbs: ". . . I am talking about what has already happened and the decision of the Supreme Court in the Local 807 case, which the gentleman made reference to, has already decided that no matter how much violence a union man might use in seeking employment, he could not be punished under the 1934 Anti-Racketeering Act. If he commits murder, or if he commits as-

sault with a weapon, it is all right under the anti-racketeering law . . ." (89 Cong. Rec. 3195).
* * *

Representative Hancock: ". . . Among the worst offenders have been certain locals of the Teamsters' Union in New York City.

"In that City Local 807 asserted that its members had the sole and exclusive rights to drive trucks of farm produce through the streets of New York to the Washington Market. Farmers driving their own trucks . . . were waylaid on the outskirts of the City and were compelled by physical violence to hire, or, at least, to pay a day's wages to members of Local 807 before they could proceed to market . . .

". . . According to that (the Local 807 decision) any thug belonging to a teamster's union may climb on a farmer's truck, beat him over the head with a club and extort a day's pay as a truck driver . . ." (89 Cong. Rec. 3210).

Representative Jennings: "Mr. Chairman, this Bill proposes to correct the condition brought about by the holdings of the Supreme Court of the United States in the case of those convicted for robbery and beating up of farmers and truckers . . . That opinion . . . holds expressly that Congress, by the language used in the Act of 1934, meant to legalize robbery by the use of force, by beating men, by holding them up when they are engaged in interstate commerce" (89 Cong. Rec. 3211).

Representative Hobbs: ". . . Mr. Chairman, I want to make it perfectly clear that *the sole and simple purpose, the single purpose of this Bill is to do the best we can to protect interstate commerce and free the highways and streets of this country of robbers . . .*" (91 Cong. Rec. 11912). (Emphasis Supplied).

> Representative Whittington: "... The bill is to prevent a repetition of the physical violences by members of labor unions on those engaged in interstate commerce. It is to prevent a repetition of the assaults and attacks upon the drivers of trucks with produce entering New York City and similar cases ..." (91 Cong. Rec. 11913).

We submit that the legislative history of the Act indicates clearly that Congress did not intend it to extend to payments induced by fear of economic losses not caused by violence. If there were any doubt about this, the subsequent passage of § 302 of the Taft-Hartley Act in the Eightieth Congress demonstrates that Congress considered that the taking of money by a labor leader for the use of his influence was a lesser offense akin to bribery, and did not constitute the serious felony of extortion under the Hobbs Act. The Court of Appeals' unwarranted extension of the language of the Act violates well-settled principles of statutory construction, is flatly contrary to the clear import of the words employed by Congress, and will drastically amend the Act to reach any case of acceptance of money by a labor leader.

CONCLUSION

For the foregoing reasons, this petition for certiorari should be granted.

Respectfully submitted,

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